Supreme Court, U. S.
FILED
NOV 21 1977
MICHAEL RODAK, JR., CLERK

in the
Supreme Court
of the United States

CASE NO: 77-851

MANUEL LOUIS FERNANDEZ,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FOR THE FIFTH CIRCUIT

MANUEL W. JAMES, ESQ.
Attorney for Petitioner
La Concha Building
Key West, FL 33040

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North Miami Beach, FL 33162
Tel: (305) 944-9100

UNITED STATES of America,
Plaintiff-Appellee,

v.

Manuel Louis FERNANDEZ,
Defendant-Appellant.

No. 76-3434.

United States Court of Appeals,
Fifth Circuit.

Aug. 4, 1977.

On appeal from orders of the United States District Court for the Southern District of Florida, at Miami, C. Clyde Atkins, J., denying motions to suppress and to divulge the identity of a confidential informant, the Court of Appeals, Gee, Circuit Judge, noting that the issues were nonjurisdictional and were pursued after defendant had entered a plea of nolo contendere, held that district courts should not receive pleas of guilty or nolo contendere if they are coupled with an agreement that the defendant may nevertheless appeal on non-jurisdictional grounds.

Affirmed pursuant to Local Rule 21.

Criminal Law — 273(1), 275

District courts should not receive pleas of guilty of nolo contendere if they are coupled with an agreement that defendant may nevertheless appeal on nonjurisdictional grounds.

Appeal from the United States District Court for the Southern District of Florida.

Before CLARK and GEE, Circuit Judges, and MARKEY,* Chief Judge.

GEE, Circuit Judge:

This case presents an appeal of a denial of a motion to suppress and motion to divulge the identity of a confidential informant. The more important aspect of the case is that these issues are non-jurisdictional and were pursued after the defendant entered a plea of nolo contendere. In United States v. Sepe, 486 F.2d 1044 (5th Cir. 1973) (en banc), the en banc court said in unequivocal terms:

> [A]s a matter of policy this court disapproves the practice of accepting pleas of guilty or nolo contendere if they are coupled with agreements that the defendant may nevertheless appeal on nonjurisdictional grounds.

We repeat this admonition: prosecutors and district courts are reminded of our statement in Sepe and the district courts are directed to cease receiving pleas so conditioned.

Nevertheless, in light of the isolated incidence of this violation and the substantial expenditure of effort on the part of all the parties concerned with this case, we proceed to the merits. AFFIRMED pursuant to Local Rule 21.[1]

*Of the U.S. Court of Customs and Patent Appeals, sitting by designation.

1. See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 76-250-Cr-CA

UNITED STATES OF AMERICA

vs.

MANUEL LOUIS FERNANDEZ

ORDER ON MANDATE

[Filed Nov 2 1977]

The Clerk of this Court having received and filed on October 14, 1977, the Mandate issued by the United States Court of Appeals for the Fifth Circuit on October 12, 1977, on the appeal taken by the defendant herein, wherein the judgment of this Court was affirmed, it is therefore

ORDERED and ADJUDGED that the Mandate of the United States Court of Appeals for the Fifth Circuit be, and the same is, hereby made the order of this Court; and that the defendant, MANUEL LOUIS FERNANDEZ, surrender himself to the United States Marshal for this District on or before November 18, 1977 at 10:00 A.M. to begin serving the sentence imposed by this Court on August 16, 1976. It is further

ORDERED and ADJUDGED that, if the defendant fails to surrender himself to the United States Marshal

for this District on or before the above-mentioned date, the bond posted in this cause is to be estreated, and the Clerk shall issue a warrant for the arrest of the defendant forthwith.

DONE and ORDERED at Miami, Florida, this 2nd day of November 1977.

/s/ C Clyde Atkins
UNITED STATES
DISTRICT COURT

cc: U. S. Attorney (2)
U. S. Marshal (2 cert.)
Chief Probation Officer
Special Agent Gaston Cairo, DEA
Alvin E. Entin, Esq.
Manuel Louis Fernandez
Allegheny Mutual Casualty Co.
Frank McGogy, Allegheny Ins. Co.

IN THE UNITED STATES
COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 76-3434

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

MANUEL LOUIS FERNANDEZ,
Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

[Filed Oct 25 1977]

(✓) The motion of APPELLANT for recall and stay of the issuance of the mandate pending petition for writ of certiorari is DENIED. See Fifth Circuit Local Rule 15, as amended January 11, 1972.

( ) The motion of _____ for recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including _____ the stay to continue in force until the final disposition of the case by the

Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

/s/ Thomas Gibbs Gee
UNITED STATES
CIRCUIT JUDGE

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK
October 12, 1977
EDWARD W. WADSWORTH
CLERK
600 CAMP STREET
NEW ORLEANS, LA. 70130
TELEPHONE 504-589-6514

Mr. Joseph I. Bogart, Clerk
U. S. District Court
P.O. Box 010669
Flagler Station
Miami, FL 33101

No. 76-3434 USA v. Manuel Louis Pernandez
(Dist. Ct. No. 76-250-CR-CA)

Dear Sir:

(XX) Enclosed is a certified copy of the judgment of this Court in the above case issued as and for the mandate.

( ) Enclosed is a certified copy of the Rule 21 Decision in the above case issued as and for the mandate.

( ) Having received from the Clerk of the Supreme Court a copy of the order of that court denying certiorari, I enclose a certified copy of the judgment of this Court in the above case, issued as and for the mandate.

( ) We have received a certified copy of an order of the Supreme Court denying certiorari in the above

cause. This court's judgment as mandate having already been issued to your office, no further order will be forthcoming.

Enclosed herewith are the following additional documents:

(XX) Copy of the Court's opinion.

(XX) Original record on appeal or review. (2 vols)

( ) Original exhibits.

( ) Bill of Costs approved by this Court.

Very truly yours,
EDWARD W. WADSWORTH,
Clerk

By Susan M. Gravois
Deputy Clerk

enc. (LETTER ONLY)
cc: Mr. Alvin E. Entin
Mr. Manuel W. James
Messrs. Stephen M. Pave
James E. McDonald